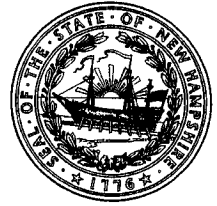




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

July 12, 2005

Town of Seabrook
Attn: Jeffrey Brown
PO Box 456
Seabrook, NH 03874-0456

Re: Docket No. AF 04-101 Motion to Accept Settlement Agreement

Dear Mr. Brown:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Director of the Waste Management Division, and accepted by Commissioner Michael P. Nolin on July 11, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael P. Sclafani,
Legal Assistant

cc: Anthony P. Giunta, P.G., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
Lynn Woodard, DES WMD
Tom Beaulieu, DES WMD
Susan Hanamoto, DES WMD

Town of Seabrook
Attn: Jeffrey Brown
P.O. Box 456
Seabrook, NH 03874-0456

**ADMINISTRATIVE FINE
No. AF 04-101**

Re: Seabrook Refueling Station
87 Centennial Street- UST ID#0-118871

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and the Town of Seabrook parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. The Town of Seabrook ("Seabrook") is the registered facility owner of three underground storage tank ("UST") systems at the Seabrook Refueling Station facility ("the Facility"), further identified as UST # 0-118871, located on real property at 87 Centennial Street in Seabrook, NH ("the Property").
3. On December 30, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-101 ("the Notice") to Seabrook seeking fines totaling \$8,400 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.
4. The Notice cited Seabrook for violating Env-Wm 1401.04(a) by failing to provide DES with a current registration form for the Facility. Pursuant to Env-C 607.02(a) the Division sought a fine of \$1,000.
5. The Notice further cited Seabrook for violating Env-Wm 1401.11(d) by failing to maintain accurate stock inventory records for Tanks 1 and 2 and Env-Wm 1401.11(f) by failing to perform annual tank gauging for the 500-gallon diesel generator UST in accordance with RSA 146-C:5 and Env-Wm 1401.11. Pursuant to Env-C 607.05(a) the Division sought a fine of \$1,500.
6. The Notice further cited Seabrook for violating Env-Wm 1401.21(l) by failing to display and permanently affix a certificate bearing the Facility's tank information. Pursuant to Env-C 607.02(b) the Division sought a fine of \$100.
7. The Notice further cited Seabrook for violating Env-Wm 1401.25(d) by failing to properly install and maintain overfill protection equipment on Tanks 1 and 2. Pursuant to Env-C 607.05(j) the Division sought a fine of \$400.

8. The Notice further cited Seabrook for violating Env-Wm 1401.30(g) by failing to perform release detection for the piping of Tank 2. Pursuant to Env-C 607.03(j) the Division sought a fine of \$1,000.
9. The Notice further cited Seabrook for violating Env-Wm 1401.31(a) by failing to maintain leak monitoring equipment in good working order at all times to continuously perform their original design function for the piping for Tanks 1 and 2 and by failing to perform the annual test for proper operation. Pursuant to Env-C 607.05(d) the Division sought a fine of \$2,000.
10. The Notice further cited Seabrook for violating Env-Wm 1401.32(c) by failing to test the cathodic protection system for Tanks 1 and 2 within three years of the last test. Pursuant to Env-C 607.04(b) the Division sought a fine of \$400.
11. The Notice further cited Seabrook for violating Env-Wm 1401.33 for failing to install corrosion protection for the flexible piping of Tanks 1 and 2. Pursuant to Env-C 607.03(f) the Division sought a fine of \$2,000.
12. In order to settle this matter, the Division and Seabrook have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.
13. Of the proposed fine, in the amount of \$8,400, 20% or \$1,680 shall be suspended due to Seabrook's history of compliance at this facility. An additional 20% or \$1,680 shall be suspended due to Seabrook's good faith effort to return this facility to compliance. An additional 20% or \$1,680 shall be suspended due to Seabrook's cooperation in returning the facility into compliance.
14. The suspended portion of the proposed fine, in the amount of \$5,040 is contingent upon Seabrook maintaining the subject UST facility in compliance with Env-Wm 1401 for a period of two years from the date of the execution of this Agreement. If Seabrook fails to maintain compliance during the two-year period, the suspended portion of the fine, in the amount of \$5,040 shall become due and payable immediately. If Seabrook maintains compliance for the prescribed two-year period, the suspended portion of the fine shall be waived.
15. Seabrook agrees to pay the remaining \$3,360 upon execution of this Agreement by Seabrook.
16. Payment under Paragraph # 15 and any payment that becomes due pursuant to Paragraph #14 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

17. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

18. By executing this Agreement, Seabrook waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

19. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Seabrook, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

20. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,
Town of Seabrook
COPY
By: *[Signature]*
Duly Authorized

6-23-05
Date

DES Waste Management Division
COPY
[Signature]
Anthony Giunta, P.G., Director

7/8/05
Date

This Motion to Accept Settlement agreement is granted this 11th day of July, 2005.

COPY
[Signature]
Michael P. Nolin, Commissioner
Department of Environmental Services